

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Christopher P. Holmes *et al.*

Application No.: 10/555,860

Filed: November 1, 2005

For: NOVEL SPACER MOIETY FOR
POLY(ETHYLENE GLYCOL)
MODIFIED PEPTIDE BASED
COMPOUNDS

Confirmation No.: 4443

Art Unit: 1654

Examiner: Andrew D. KOSAR

Mail Stop After Final
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TERMINAL DISCLAIMER UNDER 37 C.F.R. § 1.321(c)
OVER "REFERENCE" U.S. PATENT NO. 7,084,245

The owner, Affymax, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of U.S. Patent Nos. 7,084,245 (hereinafter referred to as the "prior patent") as the term of said prior patent is defined in 35 U.S.C. §§ 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154 and 173 of the prior patent, "as the term of any

patent granted on said reference application is presently shortened by any terminal disclaimer,"
in the event that prior patent later:

- (a) expires for failure to pay a maintenance fee;
- (b) is held unenforceable;
- (c) is found invalid by a court of competent jurisdiction;
- (d) is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321;
- (e) has all claims canceled by a reexamination certificate;
- (f) is reissued; or
- (g) is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

It is believed that no Terminal Disclaimer fee is required for this submission, as the fee under 37 C.F.R. § 1.20(d) was submitted with Applicants' previous terminal disclaimer filed in connection with this application on March 1, 2010.¹ However, should the U.S. Patent and Trademark Office determine that an additional Terminal Disclaimer fee is required for this submission, then the Commissioner is hereby authorized and requested to charge the required fee(s) to Deposit Account No. 06-1050 of Applicants' undersigned representatives.

Respectfully submitted,

Date: October 14, 2010

/Samuel S. Woodley/

Samuel S. Woodley, Ph.D. (Reg. No. 43,287)

Fish & Richardson P.C.

(PTO Customer No. 26211)

P.O. Box 1022

Minneapolis, MN 55440-1022

Tel. (212) 765-5070

Fax (877) 769-7945

E-mail APSI@FR.COM

Attorneys/Agents for Applicant

30555927.doc

¹ The previous Terminal Disclaimer was rejected by the Patent and Trademark Office as failing to comply with the signatory requirements of 37 C.F.R. § 1.321(b)(1)(iv).